



COUNTY OF LOS ANGELES

CHIEF INFORMATION OFFICE

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August 20, 2013

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**AMENDMENT NUMBER FOUR TO MASTER SERVICES AGREEMENT NUMBER 75869 WITH
INTERNATIONAL BUSINESS MACHINES CORPORATION FOR PROFESSIONAL CONSULTING
AND SUPPORT SERVICES
(ALL DISTRICTS – 3 VOTES)**

SUBJECT

Master Services Agreement Number 75869 (Agreement) with International Business Machines Corporation (IBM) provides access to IBM technical resources to assist with planning and technical services for IBM technologies. Proposed Amendment Number Four (Amendment) extends the Agreement for up to three 2-year extensions allowing County departments to continue access to IBM professional and technical resources relating to IBM products and solutions.

IT IS RECOMMENDED THAT THE BOARD:

1. Approve and authorize the Chief Information Officer, or his designee, to sign Amendment Number Four to the Agreement with IBM, substantially similar to the attached Amendment (Attachment I), extending the term of the Agreement for two additional years from September 5, 2013 to September 4, 2015 and updating certain County required terms and conditions.
2. Delegate authority to the Chief Information Officer, or his designee, to execute an Amendment to exercise each of the optional two additional 2-year extensions.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Chief Information Office (CIO) is recommending approval of Amendment Number Four to extend

the term of the Agreement for two years through September 4, 2015, with authorization to execute an amendment exercising each of the optional two additional 2 year extensions, all without changing the County's maximum allocated annual obligation of \$4,000,000 for Work Orders (WOs) executed under the Agreement. In addition, the Amendment will update certain Agreement terms and conditions as required by the County.

The extension will provide County departments access to IBM's technical resources to assist with the implementation and support of IBM technologies. IBM products serve an essential role in the effective operation of the County's computer systems. These services include mainframe support, Internet/Intranet websites, server consolidation, digital content management, database management, legacy system migration, storage management, and systems planning. The Amendment will continue to provide a structure that streamlines and standardizes the acquisition process for these services across the County.

The IBM Agreement engagements are executed through a WO process. Since January 1, 2007, thirty-seven (37) WOs have been issued under the Agreement with a total value of \$9,219,626.

Implementation of Strategic Plan Goals

The recommended action supports the County's Strategic Plan Goal Number 1: Operational Effectiveness. The Agreement offers the flexibility necessary to meet varied departmental needs while providing a structure for acquiring desired services through a streamlined acquisition process that is standard across the entire enterprise.

FISCAL IMPACT/FINANCING

By approving the Amendment, County departments will continue acquiring services under WOs governed by the terms and conditions set forth in the Agreement. Departments will be responsible for funding the WOs using their approved operating budgets. The administrative provisions of the Agreement require confirmation that department funding is available before each individual WO is executed.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On May 24, 2005, your Board approved the Agreement for a term of three years, with two 2-year options for a maximum allocated annual County obligation of \$4,000,000.

On September 18, 2007, your Board approved Amendment Number One to the Agreement for a one-time increase of the maximum allocated County obligation for calendar year 2007 from \$4,000,000 to \$7,000,000 in order to accommodate departmental demand for IBM professional and consulting services.

On August 25, 2009, your Board approved Amendment Number Two to the Agreement to exercise the first option to extend its term from September 5, 2009 to September 4, 2011.

On August 23, 2011, your Board approved Amendment Number Three to the Agreement to exercise the section option to extend its term from September 5, 2011 to September 4, 2013.

County Counsel has reviewed and recommends approval of the Amendment as to form. All terms and conditions included in the existing Agreement will continue to apply following execution of the

proposed Amendment with the addition of the updated County required terms and conditions and the current maximum allocated annual County obligation of \$4,000,000.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Amendment will provide County departments with continued access to IBM's professional and technical resources relating to IBM products and solutions. There will be no impact upon, or interruption of, the current services being provided by IBM.

CONCLUSION

Upon approval by your Board, it is requested that the Executive Officer-Clerk of the Board return one Adopted stamped copy of the Board letter to the CIO.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Sanchez", with a stylized flourish at the end.

RICHARD SANCHEZ
Chief Information Officer

RS:PL:JH:pa

Enclosures

c: County Counsel
Chief Executive Office
Executive Office, Board of Supervisors

AMENDMENT NUMBER FOUR

TO

MASTER SERVICES AGREEMENT

BY AND BETWEEN

THE COUNTY OF LOS ANGELES

AND

INTERNATIONAL BUSINESS MACHINES CORPORATION

FOR

INFORMATION TECHNOLOGY SERVICES

**AMENDMENT NUMBER FOUR TO
MASTER SERVICES AGREEMENT BY AND BETWEEN
THE COUNTY OF LOS ANGELES AND
INTERNATIONAL BUSINESS MACHINES CORPORATION FOR
INFORMATION TECHNOLOGY SERVICES**

This Amendment Number Four to Master Services Agreement ("Amendment No. 4") is entered into as of ____ day of _____, 2013 by and between the County of Los Angeles, a political subdivision of the State of California ("County") and International Business Machines Corporation, a New York corporation ("Contractor"), with reference to the following facts:

RECITALS

WHEREAS, County and Contractor entered into that certain Master Services Agreement for Information Technology Services (the "Agreement"), which was approved by County's Board of Supervisors on September 5, 2006;

WHEREAS, On September 18, 2007, the Agreement was amended pursuant to that certain Amendment No. 1 to increase the maximum contract sum under the Agreement;

WHEREAS, On August 25, 2009, the Agreement was further amended pursuant to that certain Amendment No. 2 to exercise the first two-year extension option as provided for under Paragraph 11.1 of the Agreement;

WHEREAS, On August 23, 2011, the Agreement was also amended pursuant to that certain Amendment No. 3 to exercise the second two-year extension option as provided for under Paragraph 11.1 of the Agreement; and

WHEREAS, The parties now wish to further amend the Agreement under this Amendment No. 4 in order (i) to provide for up to three additional two-year term extensions up to and including September 4, 2019, one upon execution of this Amendment No. 4 and two by delegated authority of County's CIO and (ii) to update the County required terms and conditions.

NOW, THEREFORE, pursuant to Paragraph 10 (Change Notices and Amendments) of the body of the Agreement and in consideration of the mutual covenants of the parties contained, County and Contractor hereby agree to amend the Agreement as follows:

1. The Agreement is hereby incorporated by reference, and all of its terms and conditions, including capitalized terms defined therein, shall have full force and effect as if fully set forth herein.
2. A new Paragraph 5.5 (Background and Security Investigations) is added at the end of Paragraph 5 (Administration of Agreement – Contractor) to read as follows:

5.5 BACKGROUND AND SECURITY INVESTIGATIONS

- 5.5.1** All Contractor staff performing Work under this Agreement shall undergo and pass, to the satisfaction of County, a background investigation as a condition of beginning and continuing work under this Agreement. Contractor may conduct its own background checks, provided that they comply with County's requirements, as acknowledged by

County's Project Manager or designee. County acknowledges that Contractor has provided information detailing Contractor's background check procedures and that the same are acceptable hereunder. If Contractor's procedures for background checks materially change, Contractor shall provide County with revised procedures for County's acceptance and acknowledgment thereof. All fees associated with obtaining the background information shall be borne by Contractor, regardless of whether Contractor's staff passes or fails the background clearance investigation.

5.5.2 County may immediately, in its sole discretion, deny or terminate facility access to any Contractor's staff, including subcontractor staff, who do not pass such background investigation(s) to the satisfaction of County and/or whose background or conduct is incompatible with County's facility access.

5.5.3 Disqualification, if any, of Contractor's staff, including subcontractor staff, shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Agreement.

3. A new Paragraph 10.1.5 (Extended Term Amendments) is added at the end of Paragraph 10.1 (Entire Agreement) to read as follows:

10.1.5 Notwithstanding any other provision of this Paragraph 10.1 (Entire Agreement), (i) the option to extend the term of the Agreement beyond the Initial Term for the first two-year period of the Extended Term shall be exercised upon execution by the parties of Amendment Number Four to the Agreement, and (ii) County's CIO shall be expressly authorized to execute Amendments on behalf of County for exercising the options to extend the term of the Agreement further for two (2) additional two-year periods of the Extended Term.

4. Paragraph 11 (Term) of the body of the Agreement is deleted in its entirety and replaced with the new Paragraph 11 (Term) revised to read as follows:

11. TERM

11.1 Unless otherwise specified in this Agreement, the term of this Agreement shall commence upon the Effective Date and shall expire seven (7) years thereafter (hereinafter "Initial Term"), unless sooner terminated or extended, in whole or in part, as provided in this Agreement. Upon expiration of the Initial Term, or any Extended Term (as defined below), County may, upon mutual agreement, renew this Agreement for three (3) consecutive two-year terms (hereinafter "Extended Term(s)") two (2) years at a time by executing an Amendment in accordance with Paragraph 10 (Change Notices and Amendments), provided that if this Agreement is not so extended, the remaining option(s) shall automatically lapse. As used herein, the term of this Agreement shall mean the Initial Term and any Extended Term(s).

11.2 Notwithstanding the provisions of Paragraph 11.1 above or anything to the contrary in this Agreement, in the event any Work Order executed prior to the termination of the Agreement continues beyond the termination of this Agreement, the term of the Agreement, including any such Work Order, shall continue until the Work Order has been completed or the Agreement has otherwise been terminated in accordance with Paragraph 25, 26, 27, 28 or 29, as applicable.

5. Paragraph 16.1 (Indemnification) of the body of the Agreement is deleted in its entirety and replaced with the new Paragraph 16.1 (Indemnification) revised to read as follows:

16.1. Indemnification

Contractor shall indemnify, defend and hold harmless County, and its Special Districts, elected and appointed officers, employees, agents and volunteers ("County Indemnitees") from and against any and all third party claims for bodily injury, and real or tangible personal property damage caused by the Contractor (and including attorney and expert witness fees), except for such loss or damage arising from the sole negligence or willful misconduct of the County Indemnitees, and for which Contractor is found legally liable, arising from or connected with Contractor's acts and/or omissions arising from and/or relating to this Agreement, and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Contractor, provided that County provides Contractor with prompt written notice of any such claim, Contractor has sole control over the defense of the claims, and County shall provide reasonable cooperation in the Contractor's defense and any related settlement negotiations. Any legal defense shall be conducted by Contractor and counsel of its choice. Notwithstanding the foregoing, County shall have the right to participate in any such defense at County's sole cost and expense.

6. Paragraph 17 (Insurance) of the body of the Agreement is deleted in its entirety and replaced with the new Paragraph 17 (Insurance) revised to read as follows:

17. INSURANCE

17.1 GENERAL INSURANCE REQUIREMENTS

Without limiting Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Paragraph 17. These minimum insurance coverage terms, types and limits ("Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Agreement. County in no way warrants that the Required Insurance is sufficient to protect Contractor for liabilities which may arise from or relate to this Agreement.

17.2 EVIDENCE OF COVERAGE AND NOTICE

- 17.2.1 Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Agreement.
- 17.2.2 Renewal Certificates shall be provided to County not less than ten (10) days after renewal of Contractor's policy. County reserves the right to obtain copies of relevant sections of any required Contractor and/or subcontractor insurance policies at any time.
- 17.2.3 Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized

representative of the insurer(s). The Insured party named on the Certificate shall match the name of Contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.

- 17.2.4 Neither County's failure to obtain, nor County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to County's Chief Information Office.

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Such report shall be made in writing within twenty-four (24) hour or the next Business Day. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its subcontractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County.

17.3 ADDITIONAL INSURED STATUS AND SCOPE OF COVERAGE

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of Contractor's acts or omissions, whether such liability is attributable to Contractor or to County. The full policy limits and scope of protection also shall apply to County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

17.3.1 Cancellation of or Changes in Insurance

Contractor shall provide County, or Contractor's insurance policies shall contain, a provision that County shall receive written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County not less than ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance of any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of this Agreement, in the sole discretion of County, upon which County may suspend or terminate this Agreement.

17.3.2 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

17.3.3 Contractor's Insurance Shall Be Primary

Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

17.3.4 Waivers of Subrogation

To the fullest extent permitted by law, Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

17.3.5 Subcontractor Insurance Coverage Requirements

Contractor shall include all subcontractors as insureds under Contractor's own policies, or shall provide County with each subcontractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each subcontractor complies with the Required Insurance provisions herein, and shall require that each subcontractor name the County and Contractor as additional insureds on the subcontractor's General Liability policy. Contractor shall obtain County's prior review and approval of any subcontractor request for modification of the Required Insurance.

17.3.6 Deductibles and Self-Insured Retentions (SIRs)

Contractor's policies shall not obligate County to pay any portion of any Contractor deductible or SIR. County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects County or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

17.3.7 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

17.3.8 Application of Excess Liability Coverage

Contractor may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

17.3.9 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations

17.3.10 Alternative Risk Financing Programs

County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. County and its Agents shall be designated as an Additional covered Party under any approved program.

17.3.11 County Review and Approval of Insurance Requirements

County reserves the right to review and adjust the required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

17.4 INSURANCE COVERAGE

17.4.1 Commercial General Liability Insurance

Providing scope of coverage equivalent to ISO policy form CG 00 01, naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate	\$2 million
Products/Completed Operations Aggregate	\$1 million
Personal and Advertising Injury	\$1 million
Each Occurrence	\$1 million

17.4.3 Automobile Liability Insurance

Providing scope of coverage equivalent to ISO policy form CA 00 01 with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

17.4.4 Workers' Compensation and Employers' Insurance

Insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

17.4.5 Professional Liability/Errors and Omissions

Insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

17.4.6 Intellectual Property Insurance

Insurance covering any actual or alleged infringement of any copyright, patent or other rights of third party, and any actual trade secret disclosure or misappropriation. Insurance coverage limit will be at least \$1 million per occurrence. If this insurance is written on a claims made form, Contractor shall either (i) maintain such insurance through the period ending two (2) years following the expiration or termination of this Agreement or (ii) obtain an endorsement on such insurance that provides an extended reporting period of not less than two (2) years following the termination or expiration of this Agreement or insurance policy, whichever is longer, or (iii) replace such claims made insurance coverage with equivalent coverage of the per occurrence form that covers the entire term of the Agreement. Contractor may satisfy the requirements of this Paragraph 17.2.6 through use of self-insurance. County will accept Contractor's self-insurance coverage provided Contractor makes available to County, upon County's request, Contractor's current publicly available audited financial statements, so that County can evaluate these statements and confirm that Contractor has adequate financial resources to respond to claims in the above amount.

17.5 FAILURE TO MAINTAIN COVERAGE

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance acceptable to County shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Contractor and/or suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from Contractor resulting from such breach. Alternatively, County may purchase the required insurance coverage and, without further notice to Contractor, deduct from sums due to Contractor any premium costs advanced by County for such insurance.

7. A new Paragraph 34 (Security) is added in the place of the currently "reserved" Paragraph 34 to read as follows:

34. SECURITY

34.1 SYSTEM SECURITY

Notwithstanding anything to the contrary herein, Contractor shall provide all work utilizing security technologies and techniques in accordance with the industry standards, Contractor's best practices and applicable County security policies, procedures and requirements provided by County to Contractor in writing or otherwise as required by law, including those relating to the prevention and detection of fraud or other inappropriate use or access of systems and networks. Without limiting the

generality of the foregoing, Contractor shall implement and use network management and maintenance applications and tools and fraud prevention and detection and encryption technologies and prevent the introduction of any Disabling Device into the System. In no event shall Contractor's actions or inaction result in any situation that is less secure than the security that Contractor then provides for its own systems and data. For purpose of this Paragraph 34, the term "Disabling Device" shall mean any device, method or means including, without limitation, the use of any "virus", "lockup", "time bomb", "key lock", "worm", "back door" or "Trojan Horse" device or program, or any disabling code, which has the potential or capability of compromising the security of County's confidential or proprietary information or of causing any unplanned interruption of the operations of or accessibility of any system or any component to County or any user or which could alter, destroy or inhibit the use of the system or any component or the data contained therein, which could block access to or prevent the use of the system or any component by County or users.

34.2 SYSTEM DATA SECURITY

Contractor hereby acknowledges the right of privacy of all persons as to whom there exists any County data. Contractor shall protect, secure and keep confidential all County data in compliance with all federal, state and local laws, rules, regulations, ordinances, and publicly known guidelines and directives, relating to confidentiality and information security (including any breach of the security of any County system, such as any unauthorized acquisition of system data that compromises the security, confidentiality or integrity of personal information). Further, Contractor shall take all reasonable actions necessary or advisable to protect all system data in its possession, custody or control from loss or damage by any cause, including fire, theft or other catastrophe. In addition, if requested by County's Project Director, Contractor shall provide notification to all persons whose unencrypted personal information was, or is reasonably believed to have been, acquired by any unauthorized person, and the content, method and timing of such notification shall be subject to the prior approval of County's Project Director. Contractor shall not use any system data for any purpose or reason other than to fulfill its obligations under this Agreement.

34.3 REMEDIES

Contractor acknowledges that a breach by Contractor of this Paragraph 34 may result in irreparable injury to County that may not be adequately compensated by monetary damages and that, in addition to County's other rights under this Paragraph 34 and at law and in equity, County shall have the right to seek injunctive relief to enforce the provisions of this Paragraph 34. The provisions of this Paragraph 34 shall survive the expiration of termination of this Agreement.

8. Except as otherwise specifically provided under this Amendment No. 4, the Agreement, as amended under Amendment No. 1, Amendment No. 2, Amendment No. 3 and this Amendment No. 4, shall remain in full force and effect.

SIGNATURES ON FOLLOWING PAGE

**AMENDMENT NUMBER FOUR TO MASTER SERVICES AGREEMENT FOR
INFORMATION TECHNOLOGY SERVICES**

IN WITNESS WHEREOF, County and Contractor by their duly authorized signatures have caused this Amendment Number Four to the Agreement to be effective on the day, month and year first above written.

COUNTY OF LOS ANGELES:

By _____
RICHARD SANCHEZ
Chief Information Officer

CONTRACTOR:
INTERNATIONAL BUSINESS MACHINES
CORPORATION

By _____
Signature

Print Name

Title

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

By _____
VICTORIA MANSOURIAN
Senior Deputy County Counsel